SPECIFIC PERFORMANCE—AGENT'S ORAL CONTRACT FOR THE SALE OF LANDS. —Defendant's agent was orally authorized to sell land. He made an oral contract with the plaintiff. Plaintiff paid a portion of the purchase price and the agent put him in possession, with the consent of the owner. Plaintiff made some improvements on the land. An exception to the Statute of Frauds provided that an oral contract for the sale of lands would be good when the vendee paid a portion of the purchase price, and was put in possession by the vendor. On a bill by vendee for specific performance of the contract, *held,* that the contract should be specifically enforced. *Jones* v. *Gainer et al.* (1908), — Ala. —, 47 South. 142.

The court said: "There is nothing in the language * * * of this statute or in its policy which requires such a delegation of authority to be in writing." HARALSON, J., in a dissenting opinion in which MCCLELLAN, J., concurred, said: "Assuming that the duty may be committed to an agent, we think there is no other construction possible or wise than that the agent must hold the written authority of the seller." There seems to be little authority directly in point. MECHEM, AGENCY, p. 66, § 89, by implication supports the dissenting opinion. It says "except in those States where the statutes expressly require the authority to be in writing, an agent may be authorized by parol to * * * contract for the sale * * * of his principal's lands." In the case at bar the statute declared all sales void unless subscribed by the person to be charged or someone authorized in writing. The exception allowed a sale to be good if the vendee were put in possession by the seller. The exception, being contrary to the body of the statute, should not be extended to the agent in the absence of an express provision.

TENANCY IN COMMON—PURCHASE OF OUTSTANDING TITLE OR CLAIM BY ONE CO-TENANT.—Defendant was one of the heirs of a common ancestor. The lands had been mortgaged by the ancestor. At a foreclosure sale after his death defendant, by an agent, purchased the lands. *Held,* that any one of the heirs has a right to purchase the entire estate to protect his own interest, and acquires the title free from any trust in favor of his co-heirs; the rule that one co-tenant cannot purchase an outstanding title affecting the common estate for his own exclusive benefit and assert the same against his co-tenants not applying. *Jackson et al.* v. *Baird et al.* (1908), — N. C. —, 61 S. E. 632.

This case follows the English rule. No fiduciary relation exists between tenants in common, as such, and a tenant in common of mortgaged premises who purchases at mortgage sale is entitled to hold it for his sole benefit. *Kennedy* v. *De Trafford* [1897], A. C. 180. It supported by *Blodgett et al.* v. *Hildreth,* 90 Mass. 186. The court recognizes in the principal case the well settled general rule "that one co-tenant cannot purchase an outstanding title or incumbrance affecting the common estate for his own exclusive benefit, and assert such right against the other co-tenants; but such purchase will inure to the benefit of all, the purchaser being entitled